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No. 91-1114

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

CALIFORNIANS FOR A CITIZEN GOVERNMENT,
Petitioners,

VS.

THE LEGISLATURE OF THE STATE OF CALIFORNIA, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

RESPONSE OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, ET AL., TO PETITION FOR WRIT OF CERTIORARI OF CALIFORNIANS FOR A CITIZEN GOVERNMENT

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The Legislature of the State of California and most of the other respondents named in this petition for writ of certiorari have separately petitioned for review of the constitutionality of California's lifetime legislative term limits and the standards by which term limits throughout the country should be judged. Petition for a writ of certiorari, *Legislature of the State of California, et al., v. March Fong Eu, et al.* (No. 91-1113) (filed January 8, 1992).[1] As the legislative petitioners discussed in that petition, those questions are of national importance and first impression, and are in

[1] All of the named respondents in this petition are petitioners in No. 91-1113 with the exception of the Board of Administration of the Public Employees Retirement System which was a respondent below and is a respondent in this Court in No. 91-1113.

urgent need of clarification by this Court. Although it upheld lifetime term limits, the California Supreme Court considered itself lacking "specific guidance from the high court" on critical issues involving the right to vote and run for office. *Legislature of the State of California v. Eu*, 54 Cal.3d 492, 517, 816 P.2d 1309, 1324, 286 Cal.Rptr. 283, 298 (1991). Even California's Attorney General expressed major reservations about the constitutional justification for a lifetime ban on further legislative service. Legislature's Petition in No. 91-1113 at 6, 19-20 (quoting Brief of Respondent March Fong Eu at 26).

This petition by Californians for a Citizen Government is essentially a cross petition. It seeks review of a subsidiary issue: whether the federal contract clause permits abrogation of the contract between legislators and the state that sets the parameters for legislative pensions. The California Supreme Court expressed no confusion about the standard concerning pensions; the law is fully developed. The issue is hardly one of immediate national concern, depending as it does so much on state contract law. Indeed, Californians for a Citizen Government's arguments for grant of certiorari rely largely on 19th and early 20th century cases, decided long before workers in this country even enjoyed pension rights. The lengthy cross petition fails to address a central issue of this Court's jurisprudence in reviewing state contract claims: to the extent that the state court does or does not find a contract under state law, this Court will generally defer to that judgment. *See, e.g. Dodge v. Board of Education*, 302 U.S. 74, 79 (1937).

That the California Court was correct on the pension issue, however, in no way detracts from the urgency of the California Legislature's petition for certiorari in No. 91-1113. The California Supreme Court seriously erred in upholding California's unnecessary and disenfranchising lifetime term limits. The constitutionality of term limits is a matter of national importance, deeply touching the most fundamental rights to vote and run for office. The Court can and should limit its consideration of the decision below to the term limits issue presented in No. 91-1113, but whether it so limits the issues or expands them to include the

contract clause question presented in No. 91-1114, certiorari should be granted.

DATED: February 5, 1992.

Respectfully submitted,

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